

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES LAWRENCE CALDWELL	:	
	:	
v.	:	
	:	
FRANK HALL, Commissioner of	:	CIVIL ACTION
Prisons, JOHN MURPHY, Warden	:	
ADAMS, Major of the Guards	:	No. 97-8069
MAJOR GUADALOUPE, PATRICIA	:	
TURNER, Corrections Officer	:	
RICHARD PITT, Deputy Warden	:	
REGINALD HAMOND, RICHARD	:	
EDMONDS, CITY OF PHILADELPHIA	:	

MEMORANDUM ORDER

Plaintiff is an inmate at F.C.I. Raybrook where he is serving a 138 month sentence imposed by the Honorable Herbert Hutton following plaintiff's conviction in this District for Hobbs Act and federal firearms offenses in connection with an armored car robbery. He has asserted a claim under 42 U.S.C. § 1983 against the former Philadelphia Prison Commissioner and several officials at the Curran Fromhold Correctional Facility for allegedly violating plaintiff's right of access to the courts. The material facts are uncontroverted.

At the time of his federal trial, plaintiff was incarcerated at S.C.I. Graterford. For purposes of attending trial, he was moved to Curran Fromhold in Philadelphia. During the period of the federal trial, which lasted four days, plaintiff was in a segregated medical unit. Plaintiff asked CO Turner for permission to use the prison law library and an

unmonitored telephone. She told plaintiff he would have to ask Lt. Edmonds. Lt. Edmonds declined permission because plaintiff was confined to a segregated unit, which had no unmonitored telephone. In response, plaintiff filed a grievance with Capt. Hammond on the first day of the federal trial. When plaintiff received no response, he filed a grievance on the last day of his trial with Warden Murphy. Plaintiff wanted to use the telephone "in preparing [his] defense." He provides no further information regarding whom he wished to call or what precisely he wanted to discuss. Plaintiff wished to use the law library to do research in connection with his request that Judge Hutton appoint new counsel for him.

Presently before the court are Motions for Summary Judgment filed by plaintiff and defendants.

Inmates have a constitutional right of meaningful access to the courts. See Bounds v. Smith, 430 U.S. 817, 823 (1977). That right is not diminished when a prisoner is housed in a segregated unit. See Valentine v. Beyer, 850 F.2d 951, 955 (3d Cir. 1988); Para-Professional Law Clinic v. Kane, 656 F. Supp. 1099, 1104 (E.D. Pa.), aff'd, 835 F.2d 285 (3d Cir. 1987), cert. denied, 485 U.S. 993 (1988). To sustain a claim for denial of access to the courts, however, a prisoner must demonstrate actual injury by showing that he was hindered in his efforts to assist in a pending criminal case or to pursue a non-frivolous

legal claim to vindicate basic constitutional or civil rights. See Lewis v. Casey, 518 U.S. 343, 354 (1996); Oliver v. Fauver, 118 F.3d 175, 177-78 (3d Cir. 1997); Sabers v. Delano, 100 F.3d 82, 84 (8th Cir. 1996); Lewis v. Cook County Dept. of Corrections, 28 F. Supp. 2d 1073, 1078 (N.D. Ill. 1998).

Plaintiff has not suggested and the court cannot discern from the hearing transcript any argument other than those he actually made at the hearing on his request for new counsel which access to legal research materials would have permitted him to make. Plaintiff has presented no evidence to show that he would have used an unmonitored telephone to discuss anything meaningful to his pending case. Even if one were to speculate or assume that plaintiff would have called his attorney, there is no showing or suggestion of anything plaintiff would have conveyed by telephone which he could not do directly each day as he sat with counsel. See, e.g., Ingalls v. Florio, 968 F. Supp. 193, 203-04 (D.N.J. 1997) (denial of legal telephone calls does not amount to actionable violation where prisoner has alternative means of adequate communication with counsel).

The court certainly does not condone the denial to an inmate of access to law books or to an unmonitored telephone if the purpose is truly to call his lawyer. Plaintiff has not, however, demonstrated by affidavit or other competent evidence the type of actual injury necessary to sustain his claim.

Plaintiff acknowledges that defendants Murphy, Adams, Guadeloupe and Pitt only learned of plaintiff's complaint about access after his trial concluded. As such, they clearly did not participate or knowingly acquiesce in the alleged violation and thus could not be liable in any event. See Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988).

Plaintiff has acknowledged that his claim against defendant Hammond is based solely on his failure to respond to plaintiff's grievance. The failure of a prison official to act favorably on an inmate's grievance is not itself a constitutional violation. See Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994), cert. denied, 514 U.S. 1022 (1995); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.), cert. denied, 488 U.S. 898 (1988); McGuire v. Forr, 1996 WL 131130, *1 n.1 (E.D. Pa. Mar.21, 1996); Pryor-El v. Kelly, 892 F. Supp. 261, 275 (D.D.C. 1995); Brown v. Dodson, 863 F. Supp. 284, 285 (W.D. Va. 1994); Orrs v. Cornings, 1993 WL 418361, *2 (E.D. Pa. Oct. 13, 1993); Flanagan v. Shively, 783 F. Supp. 922, 931 (M.D. Pa. 1992), aff'd, 980 F.2d 722 (3d Cir.), cert. denied, 510 U.S. 829 (1993).

There is no evidence whatsoever that defendant Hall had any involvement in the events complained of or ever had any knowledge at any time of plaintiff's request for access. There is no respondeat superior liability under § 1983. See Polk County v. Dodson, 454 U.S. 312, 325 (1981); Rizzo v. Goode, 423

U.S. 362, 377 (1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976).

ACCORDINGLY, this day of March, 2000, upon consideration of the parties' Motions for Summary Judgment and the respective responses, **IT IS HEREBY ORDERED** that plaintiff's Motion (Doc. #61) is **DENIED**; defendants' Motion (Doc. #62) is **GRANTED**; and, **JUDGMENT is ENTERED** in the above action for all defendants and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.